Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1255

JAMES E. DOUGLAS, JR.,

Appellant,

v.

SEACOAST PRODUCTS, INC., ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF VIRGINIA

BRIEF OF THE STATE OF MARYLAND AMICUS CURIAE

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INTERESTS OF THE STATE OF MARYLAND, AMICUS CURIAE

The interests of Maryland have been specified in its Brief in Support of Statement as to Jurisdiction. It is not necessary to repeat the factual analysis offered in that statement, but only to emphasize that Maryland's interests are concentric to Virginia's because of both the similarity of its fishery laws and the hydrologic relationship by means of the Chesapeake Bay.

OPINION BELOW

The opinion below was entered by a three-judge court for the Eastern District of Virginia on November 7, 1975. Copies of the opinion and final order are attached hereto as Appendix A.

JURISDICTION

The opinion of the three-judge District Court was entered on November 7, 1975. Appellant filed notice of appeal on January 5, 1976 in U.S. District Court for the Eastern District of Virginia. The jurisdiction of the Supreme Court to review this decision by appeal is pursuant to 28 U.S.C. §1253. This Court noted probable jurisdiction on April 26, 1976.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions of the United States Constitution involved in this controversy are the Supremacy Clause, Article VI, §92, the Equal Protection Clause, Amendment XIV, §2, the Privilege and Immunity Clause, Article IV, §2, and the Interstate Commerce Clause, Article I, §8. The Federal statutory provisions are 43 U.S.C. §1301 *et seq.*, 16 U.S.C. §1081, 16 U.S.C. §1091, Public Law 94-265 (16 U.S.C. §1801 *et seq.*) effective April 13, 1976, and Virginia Code §§28.1-60 and 28.1-81.1.

QUESTIONS PRESENTED

1. May a state, in order to conserve and maintain a viable commercial fishery, limit commercial harvesting on a residency or citizenship basis?

2. Does 16 U.S.C. §1081 preempt the Virginia Statutes which were enacted under its police power to manage and conserve a fishery resource within its jurisdictional boundaries?

STATEMENT

The State of Maryland adopts the statement of the case contained within the brief of Appellant.

ARGUMENT

The subject Virginia Statutes effectively preclude commercial fishing in both the territorial sea and the inland waters of Virginia by foreign corporations.[1] The primary thrust of §28.1-60 of the Virginia Code prohibits commercial fishing in any Virginia waters by nonresidents for the purpose of converting the fish into oil, fish scrap, fish meal or guano. An exception is provided which would allow nonresident persons or corporations to catch menhaden within the territorial sea off the coast of Virginia. However, in light of the March 19, 1975 enactment of §28.1-81.1 of the Virginia Code, Appellees cannot qualify for the exemption since all commercial harvesting under the general statute is reserved to citizens of the United States.

While the decision below was ostensibly based on determinations of preemption and equal protection, neither doctrine applies to the situation at hand. During the pendency of this action, the Bartlett Act, 16 U.S.C. §1081 *et seq.*, was repealed by the enactment of 16 U.S.C. §1801 (The Fishery Conservation and Management Act of 1976) which further acknowledges the states' role in regulating the fishery within the territorial sea.

[1] Although the Statutes affect alien individuals, the corporate status of Appellees may not present that issue for adjudication.

I.

THE SUBJECT STATUTES ARE A VALID EXERCISE OF THE POLICE POWER NOT UNDULY BURDENING INTERSTATE COMMERCE.

The environmental awakening of the past decade has focused this nation's attention on the conservation of our natural resources. The need to maintain a viable commercial and sports fishery has coalesced economic, political and social concerns into the conservation movement.

The recognition of a declining fishery[2] has generated attempts both at the international, national and state levels to fashion new practices to deal with these problems. The states, however, must rely upon the traditional police power which is an everchanging exercise by the states, attempting to deal with unique everpresent exigencies. It does not remain static, it changes with the times. *See Berman v. Parker*, 348 U.S. 26, 32 (1954). The State possesses broad powers to regulate its waters and to conserve the natural resources lying therein. *See Maryland v. Amerada Hess*, 350 F. Supp. 1060 (D. Md. 1972). It may regulate the menhaden fishery. *See also Corsa v. Tawes*, 149 F. Supp. 771 (D. Md. 1957), Aff'd 355 U.S. 37 (1957) (per curiam).

Virginia has shown a reduction in its commercial fishery harvest which coincides with Maryland's. Although foreign fishing pressure is not the sole cause for the drop, it is a cause strongly recognized by the Federal government. Foreign fishing fleet practices have proven too efficient for the available resource. If, indeed, the Virginia statutory scheme presents a burden

[2] For a brief historical view of Virginia's fishery, see Flaherty, "Virginia and the Marginal Sea, An Example of History in the Law", 58 Va. L. Rev. 694, April, 1972.

to interstate or foreign commerce, under the facts, the burden is justifiable. It is clearly permissible for state legislation to effect foreign or interstate commerce without burdening it. *New York, ex rel., Silz v. Hesterburg,* 211 U.S. 31 (1908) concerned a New York statute aimed at protecting state game by prohibiting the sale of any such game out of season, even if the source of the game sold was out of state or foreign. The case arose from the possession for sale of a grouse from Russia in New York City. The Court upheld the New York statute as a reasonable exercise of the state's police power, having only indirect interference with foreign commerce.

Even a "material" interference with interstate commerce is acceptable when protecting areas of local interest including rivers, harbors, piers, docks, quarantine regulations, and game laws. *See South Carolina Highway Dept. v. Barnwell Bros.*, 303 U.S. 177, 178 (1938); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959); and local safety measures are *presumed* to be valid. *Id.* at 524.

In *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440 (1960), the Court enunciated the burden tests, stating that:

> . . . it must be borne in mind that the Constitution when 'conferring upon Congress the regulation of commerce, . . . never intended to cut the states off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution.' *Id.* at 443, 444.

The Court had previously declared that legislation which attempts to prevent or minimize air pollution:

> . . . clearly falls within the exercise of even the most traditional concept of which is compendiously known as the police power. In the exercise of that power, the States and their instrumentalities may act, in many areas of interstate commerce and maritime activities, concurrently with the federal government. Citing *Gibbons v. Ogden*, 9 Wheat 1 (1824); *Cooley v. Board of Wardens*, 12 How 299 (1851).

In the event the proscriptions of the Virginia law affect interstate or foreign commerce, that is a purely incidental result of the legislation. The primary expressed purpose of the action falls within the traditional police power framework. It is designed to relieve harvesting pressure on the natural resources within the State of Virginia. *See Bayside Fish Flour Co. v. Gentry*, 297 U.S. 422 (1936).

In the absence of prevailing, preclusive Federal fishery legislation for the territorial sea zone, the subject Virginia statutes do not even approach an unconstitutional interstate or foreign commerce burden. In *Corsa v. Tawes, supra*, Judge Sobeloff ruled that the proscription for purse seining in the territorial zone did not prevent the fleet from fishing beyond the zone or in other areas, and, therefore, any effect to commerce was "purely incidental". The regulation was a valid exercise of local sovereignty recognized as valid by the Federal Congress. *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1915).

II.

16 U.S.C. §1081 DID NOT PREEMPT VIRGINIA'S VALID EXERCISE OF THE POLICE POWER.

The Court below held that the Bartlett Act, 16 U.S.C. §1801, pre-empted Virginia's control of commercial sea fisheries citing as support for that proposition *Toomer v. Witsell*, 334 U.S. 385, 402 (1948); *U.S. v. California*, 332 U.S. 19 (1947); *Skiriotes v. Florida*, 313 U.S. 69 (1941); and *Manchester v. Massachusetts*, 139 U.S. 240 (1891). Each of these cases, decided prior to the passage of the Submerged Lands Act of 1953, 43 U.S.C. §1301 *et seq.*, evinces the holding that a State possesses regulatory control over the natural resources lying within its boundaries. The Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, enforces the recognition that management and use of the submerged lands and natural resources is a state prerogative within the 3 mile territorial sea. *Corsa v. Tawes, supra*; *State v. Norton*, 335 A.2d 607 (S. Ct. Me. 1975); *U.S. v. F/V Taiyo Maru No. 28 S01-600*, 395 F. Supp. 413 (D. Me. 1975).

The language contained within 16 U.S.C. §1081 does not set forth a scheme of regulation so pervasive that it forecloses the exercise of state police power. Nor do the facts in this case show how the exercise of this local authority is inconsistent with §1081. The issuance of certificates of enrollment and licenses for the Seacoast vessels, pursuant to 46 U.S.C. §§808 and 835, and the subsequent Coast Guard licensing does not shield those vessels from the regulatory action of the respective states. *Huron Portland Cement Co. v. City of Detroit, supra. See also Askew v. American Waterway Operators*, 411 U.S. 325 (1973).

The aforesaid issue, however, may now be moot for as noted above, Public Law 94-265 became effective on April 13, 1976. §402 of that act repealed 16 U.S.C. §§1081-1086 and 16 U.S.C. §§1091-1094 *et seq.*

The zone of primary regulation (Fishery Conservation Zone) established under §101, 16 U.S.C. §1811, does not include the territorial sea. The United States, through the Secretary of State, may approve fishing rights in the zone for foreign nations with which the United States has a governing international fishery agreement. Management programs within the Federal zone will be promulgated by the requisite council composed of fishery management personnel from both the Federal and State governments. Section 306 of the act, 16 U.S.C. §1856, provides that nothing in the act will extend or diminish the authority of any state within its boundaries. This recognizes the prerogatives of the various coastal states within the 3 mile territorial sea.

The Fishery Conservation and Management Act of 1976 relies upon State programs within their respective jurisdictional boundaries. The Virginia Statutes in anticipating the passage of the Federal legislation are supportive of the scheme of management set out in the Federal legislation for if foreign fishing is limited within the Fishery Conservation Zone, it would be inconsistent with that effort for States to allow foreign fishing interests to commercially harvest within the 3 mile area.

III.

THE COMMONWEALTH OF VIRGINIA MAY PROTECT AND MAINTAIN ITS FISHERY RESOURCES BY UTILIZING DIFFERENT COMMERCIAL FISHERY CLASSIFICATIONS FOR RESIDENTS, NONRESIDENTS AND ALIENS.

The Court below held that the Virginia Statutes violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The basic test in determining whether a law is violative of that provision is whether or not the chosen classification is without any reasonable basis it seeks to serve. *See McGowan v. Md.*, 366 U.S. 420 (1961). The validly enacted legislation carries with it the presumption of correctness. *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955).

The Court should honor the presumption that the State legislature has passed a constitutional statute in proscribing certain activities within its boundaries. The Honorable Chief Justice observed in a recent obscenity case, *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973), as follows:

> . . . It is not for us to resolve empirical uncertainties underlying state legislation, save in the exceptional cases where that legislation plainly impinges upon rights protected by the Constitution. *Id.* at 60.

Illustrating this principle, the Chief Justice stated:

> . . . when legislatures and administrators act to protect the physical environment from pollution and to preserve our resources of forests, streams, and parks, they must act on such imponderables as the impact of a new highway near or through an existing park or wilderness area. *See Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 417-420, 91 S. Ct. 814, 834-826 (1971). *Id.* at 62.

Although Appellees have clear standing to raise the alien issue which prohibits their ability to commercially fish for menhaden within the 3 mile limit, it is unclear whether the nonresidency issue has also been presented. If viewed in a true equal protection context, the issue presented is whether the separate classification of foreign fishery interests serves a valid basis to attain the goal of fishery conservation. The findings provisions within the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, express the reasoning behind this classification, since it also serves as the foundation for restricting foreign fishing vessels from the Fishery Conservation Zone. Congress determined that those species of fish which live in the continental shelf and those andromous species spawning in tidal estuaries are valuable natural resources which contribute to the food supply, economy and health of the nation and provide recreational opportunities. Congress recognized that because of increased fishing pressure the survival of certain stocks of these fish are threatened and that commercial and recreational fishing is a major source of employment for the United States. Certain coastal areas are more dependent on the fishery resource than others and the "massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, and interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen". Congress further stated that the fishery resources are finite and renewable and that a national program for conservation and management programs is necessary to protect against overfishing and to insure conservation.

The primary goal of Public Law 94-265 is to conserve the national fishery resource by preventing overfishing by foreign interests. This is now a recognized national

goal. It is difficult to understand how the same classification to accomplish the same goal, within Virginia's boundary can be construed as violative of equal protection.

Substantial reliance has been placed below on *Toomer v. Witsell, supra*, which seemingly departed from *McCready v. Virginia*, 944 U.S. 391 (1877). That decision, however, was based upon application of the Privileges and Immunity Clause which required that equal treatment be afforded Georgia commercial fishermen while in the State of South Carolina. This case was decided shortly after this Court's decision in *U.S. v. California, supra*, which held that California did not own the waters offshore its coast nor have a proprietorship interest in the natural resource located therein. This lack of a proprietorship interest was recognized in *Toomer:*

> The fact that it is actively in the three-mile belt which the South Carolina statute regulates is of equal relevance in considering the applicability of the ownership doctrine. While *United States v. California*, 332 U.S. 19 (1947), as indicated above, does not preclude all State regulation of activity in the marginal sea, the case does hold that neither the thirteen original colonies nor their successor States separately acquired "ownership" of the three-mile belt. *Id.* at 402.

The Court then distinguished *McCready* on two counts: 1) that the *McCready* opinion dealt with sedentary shellfish as compared to the free-swimming shrimp which migrate through the waters of several states; and 2) *McCready* dealt with the regulation of fishing in inland waters as compared to shrimping in the territorial sea.

Arguably *Toomer* would have been decided differently if it surfaced subsequent to the enactment of the

Submerged Lands Act in 1953, 43 U.S.C.A. §1301 *et seq.* This Act conferred, confirmed and established the management and use of the submerged lands and natural resources into the respective coastal states and, therefore, serves as a jurisdictional basis for the assertion of State prerogatives within the three-mile belt. *See U.S. v. Maine*, 420 U.S. 515 (1975); *see also State v. Norton, supra.*

It should be noted, however, that the protection of the privileges and immunity clause is only extended to citizens of the United States and is not applicable to foreign-owned corporations. *See Matthews v. Diaz*, 44 Law Weekly 4748 June 1, 1976, fn. 12.[3] Because corporate control may technically rest in foreign interests, the equal protection provisions also may not be available.[4] Irrespective of the applicability, when reviewing and weighing the reasonableness of a classification in terms of the goal it seeks to attain, the character of the classification and the individual interests affected by the classification must be considered by the Court. *See Dunn v. Blumstein*, 405 U.S. 330 (1972); *Dandridge v. Williams*, 397 U.S. 471 (1970); *note* "The Decline and Fall of the New Equal Protection," 58 Va. L. Rev. 1489, Nov. 1972.

Given the propriety of the classification and the goal it seeks to serve, the basic individual interests which would be affected by striking down the Virginia Statutes would be those of resident commercial harves-

[3] Those cases which afford the Equal Protection Clause sanctions to legislation affecting resident aliens, emphasize the *nexus* of the aliens to the State, i.e., the payment of taxes, service in the armed forces and their contribution to the economic growth of the jurisdiction. *See Graham v. Richardson*, 403 U.S. 365 (1971).

[4] *Edwards v. Leaver*, 102 F. Supp. 698 (1952) involved a "Smith Meal Company", however, the issue of foreign control was not present or discussed.

ters and those citizens which are interdependent upon the local fishery industry. Mr. Justice Frankfurter's concurring opinion in *Toomer v. Witsell, supra,* acknowledges:

> A State may care for its own in utilizing the bounties of nature within her borders because it has technical ownership of such bounties or, when ownership is in no one, because the State may for the common good exercise all the authority that technical ownership ordinarily confers.
>
> When the Constitution was adopted, such, no doubt, was the common understanding regarding the power of States over their fisheries, and it is this common understanding that was reflected in *McCready v. Virginia*, 94 U.S. 391, 24 L. Ed. 248. The McCready Case is not an isolated decision to be looked at askance. It is the symbol of one of the weightiest doctrines in our law. It expressed the momentum of legal history that preceded it, and around it in turn has clustered a voluminous body of rulings. Not only has a host of State cases applied the McCready doctrine as to the power of States to control their game and fisheries for the benefit of their own citizens, but in our own day this Court formulated the amplitude of the *McCready doctrine by referring to "the regulation or distribution of the public domain, or of the common property or resources of the people of the State, the enjoyment of which may be limited to its citizens as against both aliens and the citizens of other States." *Truax v. Raich*, 239 U.S. 33, 39, 40, 60 L. Ed. 131, 134, 135, 36 S. Ct. 7, LRA 1916D 545, Ann. Cas. 1917B 283. *Id.* at 408, 409.

Based upon this language, the Maryland Court of Appeals does not consider the McCready doctrine to have expired subsequent to the announcement of *Toomer v. Witsell* by this Court.

> In evaluating *Toomer v. Witsell*, we do so within the frame of reference as to what may be discriminatory regulations regarding commercial fishing

> rights in the marginal sea bounding the coastline of a state, and would not deem it authority out of such context. Additionally, although Professor Power in his article pronounced *McCready* functionally dead", we, in view of the life breathed into it in the concurring opinion in *Toomer v. Witsell*, consider it still among the quick and will continue to do so until its obituary appears among the Supreme Court Reports.

Bruce v. Dir., Chesapeake Bay Affairs, 261 Md. 585, 611 (1971).

Furthermore, the classifications based upon residency are not *per se* violative of equal protection. Virginia, in fact, has indicated the existence of other methods of protecting the commercial fishery by regulating the net size used by fishermen. Maryland law, while also classifying nonresidents differently from residents, has adopted a comprehensive scheme of fishery management which involves limitations placed upon net licensing whereby pound nets and haul seines are limited to specific sizes and legnths.[5] Catch limits are also imposed on shellfish.[6] These controls along with residency restrictions are part of a comprehensive scheme seeking to maintain a viable fishery while satisfying the known demands placed upon it.

CONCLUSION

The Federal government has recognized that the exclusion of foreign fishing interests from a zone 197 miles wide offshore this nation's coast is necessary as a fishery conservation measure. Lying between the Federal Fishery Conservation Zone and the Virginia

[5] *See* §4-704 of the Natural Resources Article, Annotated Code of Maryland (1974 Vol. and 1975 Supp.).

[6] *See* §4-1009 of the Natural Resources Article, Annotated Code of Maryland (1974 Vol. and 1975 Supp.).

shore is a 3 mile territorial sea in which Virginia by the subject statutes has also prohibited alien fishing. Virginia's program, therefore, is consistent with the goals and procedures of the Federal legislation.

This control mechanism is based upon the same rationale that the new Federal act relies upon — that foreign fishing pressures are inimical to the maintenance of a viable commercial fishery. *Toomer v. Witsell, supra*, did not overrule the McCready determination that a state can adopt reasonable measures to protect the natural resources located within it. If the power to adopt these measures is no longer based upon proprietorship theories, it is supportable as a proper exercise of the state's police power. The Submerged Lands Act of 1953 recognizes that states should utilize their prerogatives within the territorial sea and the recent Federal legislation affirms that concept.

Respectfully submitted,

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Appendix A

In The United States District Court
For The
Eastern District Of Virginia
Newport News Division

Civil Action No. 75-69-NN

(Three-Judge Court)

Seacoast Products, Inc., The New Smith Meal Company, Inc. And Second Oceanic Corporation,
Plaintiffs,
v.
James E. Douglas, Jr., Commissioner, Virginia Marine Resources Commission,
Defendant.

FINAL ORDER

Upon consideration of the record, including the affidavits filed herein and stipulations of counsel, as well as of the arguments of counsel orally and on brief, the Court, for the reasons stated in its opinion this day filed, ADJUDGES, ORDERS and DECREES:

1. That the motion of the plaintiffs for summary judgment in accordance with the complaint, be and it is hereby, sustained;

2. That the defendant, his successor and successors in office, as well as his agents, servants, employees and attorneys be and each of them is hereby restrained and enjoined from the enforcement against the plaintiffs or

any of them of the statutes designated as Code of Virginia, §§28.1-60 and 28.1-81.1, in respect to the prohibitions of the plaintiffs to engage in fishing for menhaden in Chesapeake Bay and in the Atlantic Ocean within three miles of the shore of Virginia; and

3. That the plaintiff recover their costs of the defendant.

/s/ ALBERT V. BRYAN
Senior United State Circuit Judge

/s/ RICHARD B. KELLAM
United States District Judge

/s/ JOHN A. MACKENZIE
United States District Judge

November 7, 1975.

In The United States District Court
For The
Eastern District Of Virginia
Newport News Division

Civil Action No. 75-69-NN

Seacoast Products, Inc., The New Smith Meal Company, Inc. And Second Oceanic Corporation,
Plaintiffs,

v.

James E. Douglas, Jr., Commissioner, Virginia Marine Resources Commission,
Defendant.

THREE-JUDGE COURT

Argued: October 15, 1975 Decided: November 7, 1975

Before BRYAN, Senior Circuit Judge, KELLAM, District Judge and MacKENZIE, District Judge.

T. H. Willcox, Jr., of Willcox, Savage, Lawrence, Dickson & Spindle, Norfolk, Virginia, counsel for plaintiffs; James E. Moore, Assistant Attorney General [Andrew P. Miller, Attorney General], Richmond, Virginia, counsel for defendant.

Albert V. Bryan, Senior Circuit Judge:

In question here is the constitutionality of two Virginia statutes restricting the fishing of menhaden in her part of Chesapeake Bay and in the Atlantic Ocean within three miles[1] of her coast. Plaintiffs, Seacoast Products, Inc., The New Smith Meal Company, Inc., and Second Oceanic Corporation, now and for a number of years engaged in such fishing in these areas, sue the Virginia Commissioner of Marine Resources to have these restrictions declared invalid and to enjoin his imposed enforcement of them.[2] Plaintiffs' motion for summary judgment must be sustained.[3]

The two statutes are Virginia Code §28.1-60 and §28.1-81.1. Epitomized, the force of §28.1-60 is to allow a nonresident a license to fish menhaden "within the three-mile limit" but to exclude *non-residents* of

[1] This is known as the 3-mile limit or the jurisdictional belt along the coasts of the ocean bordering States. It was fixed by Secretary of State Thomas Jefferson in 1793 and has been generally accepted internationally. United States v. California, 332 U.S. 19, 33 (1947).

[2] Jurisdiction is rested on complete diversity of citizenship between plaintiffs and defendant as well as on the presence of a Federal question. 28 U.S.C. 1331, 1332. That the amount involved is in excess of $10,000, exclusive of interest and costs, is not disputed. A three-judge court has been convened in accordance with 28 U.S.C. 2281 and 2284.

[3] There are no critical, genuine factual differences between the parties.

Virginia from menhaden fishing in the Virginia portion of Chesapeake Bay, while at the same time permitting Virginia *residents* to fish for menhaden in that body of water. The force of §28.1-81.1 is to exclude any fishing by *aliens* within the three-mile limit off the Virginia coast. Thus non-residence and alienage are the determinant factors in the ban of plaintiffs from a piscary for menhaden.

The challenged provisions, we conclude, "flagrantly and patently" as well as irreparably offend plaintiffs' rights under the Fourteenth Amendment's equal protection clause and under the preemptive and exclusive Federal regulation of sea fisheries. In this context the doctrines of abstention have no place. In other circumstances they are appropriate: to obtain interpretation of a State statute, Railroad Commission v. Pullman Co., 312 U.S. 496 (1941); or to avoid needless interference with the administration of State domestic policies, Alabama Public Service Commission v. Southern Railway Co., 341 U.S. 341 (1951); or to avoid obstruction of State prosecutions, Younger v. Harris, 401 U.S. 37 (1971); but forbearance of Federal judicial action is not demanded when the deprivation of rights is so severe, clear and damaging as here. Huffman v. Pursue, 420 U.S. 592, 602 (1975); *Younger, supra*, at 53-54; Zwickler v. Koota, 389 U.S. 241, 248, 249-250 (1967). For the same reasons prior exhaustion of State administrative or judicial remedies is not mandatory. On study of the merits of the complaint we grant the relief it prays.

Plaintiff Seacoast Products is a Delaware chartered corporation with its principal office in New Jersey; Smith Meal is a Massachusetts corporation with its office in New Jersey; and Oceanic is a New York corporation having its principal place of business in that State. The last two corporations are wholly-owned subsidiaries of Seacoast which in turn is ultimately controlled, through subsidiaries, by Hanson Trust Ltd., a corporation organized and existing under the laws of the United Kingdom. For many years the plaintiff

parent and subsidiary corporations have been embarked on menhaden seining in Chesapeake Bay and in the Virginia three-mile ocean belt.

Menhaden are not edible by humans. They are ground into fish meal for poultry feed, fish solubles as ingredients of animal feed, and fish oil for the manufacture in Europe and Canada of margarine. Hence the statutes are not purposed to conserve the food supply of the State. It is conceded by plaintiffs that Virginia could exact from them the same licenses as she required of residents for fisheries in her inland waters. Indeed, plaintiffs have heretofore applied for and been granted the requisite licenses for several years past. However, based on the two Code sections, their applications were denied in May 1975 because of their nonresident status and ultimate British control.

I. Plaintiffs' first point is that since the licenses are granted to Virginia domestic and resident corporations but refused non-resident corporations, there is discrimination in contravention of the Fourteenth Amendment assurance of equal protection of the laws. It cannot be successfully gainsaid that this is in actuality the impact of §28.160.

Particularly exampling the discrimination is the licensing of Zapata Haynie Corporation and Standard Products Company, Inc., both resident corporations of Virginia, to fish menhaden in the areas forbidden nonresidents. It is alleged, without contradiction, that Zapata is the largest, Seacoast the next largest and Standard the third largest of such fishers.

Supportive of plaintiffs is Takahashi v. Fish and Game Commission, 334 U.S. 410, 419-20 (1948). It dealt with the denial by a State of a license to a lawfully resident Japanese to earn his living by fishing commercially in ocean waters off her coast. The State action was premised on his ineligibility under Federal law to achieve United States citizenship. In reaching its decision the Court declared the equality in *every* State of all who are lawful residents of *any* State:

> "The Fourteenth Amendment and the laws adopted under its authority thus embody a general

> policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws."

Incidentially, the Court in both *Takahashi, supra,* at p. 420, and in Toomer v. Witsell, 334 U.S. 385, 401 (1948) declined to treat, as *contra*, McCready v. Virginia, 94 U.S. 391 (1876) upholding the State statute prohibiting "citizens of other States but not Virginia citizens from planting oysters" in her tidal river waters.

II. The alienage issue, made by the plaintiffs' attack on Virginia Code, §28.1-81.1, is predicated on the statute's denial of a commercial license to any person, firm or corporation not a citizen of the United States for the taking of any fish from the marginal ocean waters of Virginia. The vitality of that statute, however, has been superseded by an Act of Congress approved May 20, 1964, 78 Stat. 194, 16 U.S.C. 1081, et seq., declaring as far as pertinent here that "[i]t is unlawful for any vessel, except a vessel of the United States, or for any master or other person in charge of such a vessel, to engage in the fisheries within the territorial waters of the United States . . .", except upon authorizations not relevant here. In our judgment this legislation preempted Virginia's control of commercial sea fisheries and superseded the State's regulation of them. Toomer v. Witsell, 334 U.S. 385, 393, 394 (1948); United States v. California, *supra*, 332 U.S. 19 (1947); Skiriotes v. Florida, 313 U.S. 69, 75 (1941); Manchester v. Massachusetts, 139 U.S. 240 (1891).

Subsequently, the United States allowed Seacoast's 68 vessels to be documented unconditionally as vessels of the United States, thus rendering them eligible under 16 U.S.C. 1081 to fish within the Virginia 3-mile limit. The acceptance was ordered by the Secretary of Commerce under the provisions of the Shipping Act, 46 U.S.C. 808, 839. He acted only after a full hearing, at which competing fisheries opposed the approval because of the British interest in Seacoast.

Although it is not an issue here, the evidence is abundant to warrant the documentation. Seacoast is, as heretofore noted, incorporated under the laws of Delaware; it is operated by boards of citizen directors and officers; all the ship officers and crews are also United States citizens. Clearly, Seacoast and its subsidiaries are lawfully fishing in the Virginia waters despite her proscriptive statute.

However, the State maintains that the statute is essential to the protection of the State's ocean waters against depredations by citizens of foreign countries or their ships. The argument is that the jurisdiction of the Federal government begins at the farther limit of the 3-mile zone and from there extends to the limit of the new 12-miles sovereignty line of the United States. Virginia concludes that, therefore, she has the duty and power to exercise control within the 3-mile limit. We are unable to agree. The decisions heretofore cited — *Toomer, California, Skiriotes* and *Manchester, supra* — determining Federal jurisdiction over the marginal sea to be superior to the rights of the States also declare that the Federal government has paramount authority in the entire marginal belt, including the 3-mile limit. Accordingly, prevention of incursions by foreigners is the responsibility exclusively of the Federal government.

III. Finally, enforcement of the Virginia statutes uncontestably would inflict irreparable injury upon plaintiffs because of the natural habits of menhaden. Migratory fin fishes commonly swimming on the surface in great shoals or schools, they are taken in purse-nets. From January to March they congregate in the far offshore seawaters from North Carolina to Florida. Beginning in March they run northwardly, as far as Cape Cod. They return in the fall and in January move again far out to sea — later to retrace their March-October path. Only in the summer are they to be found just outshore, when and where, obviously, fishing of them is practicable.

Should Virginia press its two statutes — both of which contain severe sanctions for violations — during the summer by the seizure of even one of plaintiffs'

ships, since it loads $80,000 worth of menhaden, or by otherwise interrupting plaintiffs' fishing, there would be no recoupment whatsoever for losses occurring during or after the prosecution of the charges, no matter if plaintiffs prevailed at trial. Catches already made would also be lost for the cargoes are quickly perishable. It is reasonable to assume that any such litigation could last for months, certainly into the summer season. These very facts prove the irreparable injury the Court predicted in Toomer v. Witsell, *supra*, 334 U.S. 385, 392 (1948). "[T]he danger of irreparable loss is both great and immediate." Fenner v. Boykin, 271 U.S. 240, 243 (1926).

Thus plaintiffs' prayer for an injunction, in addition to a declaration of the invalidity of the Virginia statutes, should be granted restraining the continued refusal of the defendant Commissioner to issue the requisite licenses to plaintiffs.

An order will be entered effectuating this opinion.

APPENDIX B

Supremacy Clause, U.S. Const. art. VI, ¶2

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Equal Protection Clause, U.S. Const. Amend. XIV. §1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

16 U.S.C. §1081

It is unlawful for any vessel, except a vessel of the United States, or for any master or other person in charge of such a vessel, to engage in the fisheries within the territorial waters of the United States, its territories and possessions and the Commonwealth of Puerto Rico, or within any waters in which the United States has the same rights in respect to fisheries as it has in its territorial waters or in such waters to engage in activities in support of a foreign fishery fleet or to engage in the taking of any Continental Shelf fishery resource which appertains to the United States except as provided in this chapter or as expressly provided by an international agreement to which the United States is a party. However, sixty days after written notice to the President of the Senate and the Speaker of the House of Representatives of intent to do so, the Secretary of the Treasury may authorize a vessel other than a vessel of the United States to engage in fishing for designated species within the territorial waters of the United States or within any waters in which the United States has the same rights in respect to fisheries as it has in its territorial waters or for resources of the Continental Shelf which appertain to the United States upon certification by the Secretaries of State and of Commerce that such permission would be in the national interest and upon concurrence of any State, Commonwealth, territory, or possession directly affected. The authorization in this section may be granted only after a finding by the Secretary of Commerce that the country of registry, documentation, or licensing extends substantially the same fishing privileges for a fishery to vessels of the United States. Notwithstanding any other provision of law, the Secretary of State, with the concurrence of the Secretaries of the Treasury and of Commerce, may permit a vessel, other than a vessel of the United States, owned or operated by an international organization of which the United States is a member, to engage in fishery research within the territorial waters of the United States has the same rights in respect to fisheries as it has in its territorial

waters, or for resources of the Continental Shelf which appertain to the United States and to land its catch in a port of the United States in accordance with such conditions as the Secretary may prescribe whenever they determine such action is in the national interest.

CHAPTER 21A.—FISHERIES ZONE CONTIGUOUS TO TERRITORIAL SEA OF UNITED STATES

Sec.

1091. Establishment; fisheries rights.
1092. Description of boundaries.
1093. Substitution of description of boundaries where conflict of zones or waters.
1094. State jurisdiction over natural resources and waters.

§ 1091. Establishment; fisheries rights

There is established a fisheries zone contiguous to the territorial sea of the United States. The United States will exercise the same exclusive rights in respect to fisheries in the zone as it has in its territorial sea, subject to the continuation of traditional fishing by foreign states within this zone as may be recognized by the United States.

Pub.L. 89-658, § 1, Oct. 14, 1966, 80 Stat. 908.

§1092. Description of boundaries

The fisheries zone has as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary.

Pub.L. 89-658, § 2, Oct. 14, 1966, 80 Stat. 908.

§1093. Substitution of description of boundaries where conflict of zones or waters

Whenever the President determines that a portion of the fisheries zone conflicts with the territorial waters or fisheries zone of another country, he may establish a

seaward boundary for such portion of the zone in substitution for the seaward boundary described in section 1092 of this title.

Pub.L. 89-658, § 3, Oct. 14, 1966, 80 Stat. 908.

§1094. State jurisdiction over natural resources and waters

Nothing in this chapter shall be construed as extending the jurisdiction of the States to the natural resources beneath and in the waters within the fisheries zone established by this chapter or as diminishing their jurisdiction to such resources beneath and in the waters of the territorial seas of the United States.

Pub.L. 89-658, § 4, Oct. 14, 1966, 80 Stat. 908.

Public Law 94-265
94th Congress, H. R. 200
April 13, 1976

An Act

To provide for the conservation and management of the fisheries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Fishery Conservation and Management Act of 1976".

Fishery Conservation and Management Act of 1976.
16 USC 1801 note.

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SEC. 2. FINDINGS, PURPOSES AND POLICY

16 USC 1801.

(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources.

These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by United States fishermen, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans

which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourage the development of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska.

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act; and

(5) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources.

SEC. 3. DEFINITIONS. 16 USC 1802.

As used in this Act, unless the context otherwise requires—

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(3) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the super-

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jacent waters admits of the exploitation of the natural resources of such areas.

(4) The term "Continental Shelf fishery resources" means the following:

COLENTERATA

Bamboo Coral—Acanella spp.;
Black Coral—Antipathes spp.;
Gold Coral—Callogorgia spp.;
Precious Red Coral—Corallium spp.;
Bamboo Coral—Keratoisis spp.; and
Gold Coral—Parazoanthus spp.

CRUSTACEA

Tanner Crab—Chionoecetes tanneri;
Tanner Crab—Chionoecetes opilio;
Tanner Crab—Chionoecetes angulatus;
Tanner Crab—Chionoecetes bairdi;
King Crab—Paralithodes camtschatica;
King Crab—Paralithodes platypus;
King Crab—Paralithodes brevipes;
Lobster—Homarus americanus;
Dungeness Crab—Cancer magister;
California King Crab—Paralithodes californiensis;
California King Crab—Paralithodes rathbuni;
Golden King Crab—Lithodes aequispinus;
Northern Stone Crab—Lithodes maja;
Stone Crab—Menippe mercenaria; and
Deep-sea Red Crab—Geryon quinquedens.

MOLLUSKS

Red Abalone—Haliotis rufescens;
Pink Abalone—Haliotis corrugata;
Japanese Abalone—Haliotis kamtschatkana;
Queen Conch—Strombus gigas;
Surf Clam—Spisula solidissima; and
Ocean Quahog—Artica islandica.

SPONGES

Glove Sponge—Hippiospongia canaliculata;
Sheepswool Sponge—Hippiospongia lachne;
Grass Sponge—Spongia graminea; and
Yellow Sponge—Spongia barbera.

Publication in Federal Register.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(5) The term "Council" means any Regional Fishery Management Council established under section 302.

(6) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(7) The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(8) The term "fishery conservation zone" means the fishery conservation zone established by section 101.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(10) The term "fishing" means—

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(11) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(14) The term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

(15) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(16) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(17) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

(18) The term "optimum", with respect to the yield from a fishery, means the amount of fish—

(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

(19) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(20) The term "Secretary" means the Secretary of Commerce or his designee.

(21) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(22) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(23) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

1 USC prec. title 1.

(24) The term "United States", when used in a geographical context, means all the States thereof.

(25) The term "vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State.

TITLE I—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

16 USC 1811. **SEC. 101. FISHERY CONSERVATION ZONE.**

There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

16 USC 1812. **SEC. 102. EXCLUSIVE FISHERY MANAGEMENT AUTHORITY**

The United States shall exercise exclusive fishery management authority, in the manner provided for in this Act, over the following:

(1) All fish within the fishery conservation zone.

(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

16 USC 1813. **SEC. 103. HIGHLY MIGRATORY SPECIES.**

The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish.

16 USC 1811 note. **SEC. 104. EFFECTIVE DATE.**

This title shall take effect March 1, 1977.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

SEC. 201. FOREIGN FISHING. 16 USC 1821.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless such foreign fishing—

(1) is authorized under subsection (b) or (c);

(2) is not prohibited by subsection (f); and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.

(b) EXISTING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202(b) or (c)), if such agreement—

(1) was in effect on the date of enactment of this Act; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203. Any such international fishery agreement shall hereafter in this Act be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions: Terms and conditions.

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

(A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted— Post, p. 358.

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307, and Post, p. 355.

(iii) to examine and make notations on the permit issued pursuant to section 204 for such vessel;

(B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines

to be appropriate, be installed and maintained in working order on each such vessel;

(D) duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers;

(E) any fees required under section 204(b)(10) be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, exceed such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

(4) The foreign nation will—

(A) apply, pursuant to section 204, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel; and

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 204(a) and the applicable conditions and restrictions established under section 204(b)(7).

(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with the provisions of this Act.

(e) ALLOCATION OF ALLOWABLE LEVEL.—The Secretary of State, in cooperation with the Secretary, shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to any fishery subject to the exclusive fishery management authority of the United States. In making any such determination, the Secretary of State and the Secretary shall consider—

(1) whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;

(2) whether such nations have cooperated with the United States in, and made substantial contributions to, fishery research and the identification of fishery resources;

(3) whether such nations have cooperated with the United States in enforcement and with respect to the conservation and management of fishery resources; and

(4) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(f) RECIPROCITY.—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the

Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(g) PRELIMINARY FISHERY MANAGEMENT PLANS.—The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b), shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III, before March 1, 1977. To the extent practicable, each such plan— Post, p. 346.

(1) shall contain a preliminary description of the fishery and a preliminary determination as to the optimum yield from such fishery and the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and

(C) are described in section 303(b)(2), (3), (4), (5), and (7).

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, United States Code, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 305. Regulations.

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS. 16 USC 1822.

(a) NEGOTIATIONS.—The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b);

(2) shall negotiate governing international fishery agreements described in section 201(c);

(3) may negotiate boundary agreements as provided for in subsection (d);

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.

(b) TREATY RENEGOTIATION.—The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the fishery conservation zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment.

(c) INTERNATIONAL FISHERY AGREEMENTS.—No international fishery agreement (other than a treaty) which pertains to foreign fishing within the fishery conservation zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area—

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 201(c).

(d) BOUNDARY NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the fishery conservation zone of the United States in relation to any such nation.

(e) NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to a fishery conservation zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

16 USC 1823.

SEC. 203. CONGRESSIONAL OVERSIGHT OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

Transmittal to Congress.

(a) IN GENERAL.—No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) REFERRAL TO COMMITTEES.—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce and Foreign Relations.

(c) COMPUTATION OF 60-DAY PERIOD.—For purposes of subsection (a)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) CONGRESSIONAL PROCEDURES.—

(1) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) DEFINITION.—For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

(3) PLACEMENT ON CALENDAR.—Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) FLOOR CONSIDERATION IN THE HOUSE.—

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

Debate limitation.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(5) FLOOR CONSIDERATION IN THE SENATE.—

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

Debate limitation.

16 USC 1824.

SEC. 204. PERMITS FOR FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—

(1) ELIGIBILITY.—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a).

(2) FORMS.—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) CONTENTS.—Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force; and

(E) the ocean area in which, and the season or period during which, such fishing will be conducted;

and shall include any other pertinent information and material which the Secretary may require.

Publication in Federal Register.

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish such application in the Federal Register and shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

Transmittal to congressional committees.

(C) a copy of such material to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate.

Written comments.

(5) ACTION BY COUNCIL.—After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) APPROVAL.—After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve the application, if he determines that the fishing described in the application will meet the requirements of this Act.

(7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 201(c) (1), (2), and (3).

(D) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating;

(C) any Council which has authority over any fishery specified in such application; and

Transmittal to congressional committees.

(D) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committees on Commerce and Foreign Relations of the Senate.

(9) DISAPPROVAL OF APPLICATIONS.—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10) FEES.—Reasonable fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish and publish a schedule of such fees, which shall apply nondiscriminatorily to each foreign nation. In determining the level of such fees, the Secretary may take into account the cost of carrying out the provisions of this Act with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement.

(11) ISSUANCE OF PERMITS.—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(12) SANCTIONS.—If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 307 the Secretary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue the Secretary shall—

(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

(B) suspend such permit for the period of time deemed appropriate; or

(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

Any permit which is suspended under this paragraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

(c) REGISTRATION PERMITS.—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

SEC. 205. IMPORT PROHIBITIONS. 16 USC 1825.

(a) DETERMINATIONS BY SECRETARY OF STATE.—If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, in accordance with traditional fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 201 (c) and (d) and 204 (b) (7) and (10), because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

(b) PROHIBITIONS.—Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

(c) REMOVAL OF PROHIBITION.—If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) DEFINITIONS.—As used in this section—

(1) The term "fish" includes any highly migratory species.

(2) The term "fish products" means any article which is produced from or composed of (in whole or in part) any fish.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

16 USC 1851. **SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.**

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) GUIDELINES.—The Secretary shall establish guidelines, based on the national standards, to assist in the development of fishery management plans.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

16 USC 1852. Establishment.

(a) ESTABLISHMENT.—There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(1) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The New England Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(2) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(3) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(4) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States. The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(5) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States. The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(6) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the

Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(7) NORTH PACIFIC COUNCIL.—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(8) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(b) VOTING MEMBERS.—(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary shall be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable constituent State. With respect to the initial such appointments, such Governors shall submit such lists to the Secretary as soon as practicable, not later than 45 days after the date of the enactment of this Act. As used in this subparagraph, (i) the term "list of qualified individuals" shall include the names (including pertinent biographical data) of not less than three such individuals for each applicable vacancy, and (ii) the term "qualified individual" means an individual who is knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.

"List of qualified individuals."

"Qualified individual."

Term.

(2) Each voting member appointed to a Council pursuant to paragraph (1)(C) shall serve for a term of 3 years; except that, with respect to the members initially so appointed, the Secretary shall designate up to one-third thereof to serve for a term of 1 year, up to one-third thereof to serve for a term of 2 years, and the remaining such members to serve for a term of 3 years.

(3) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(c) NONVOTING MEMBERS.—(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) COMPENSATION AND EXPENSES.—The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties.

5 USC 5332 note.

(e) TRANSACTION OF BUSINESS.—

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet in the geographical area concerned at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement.

(f) STAFF AND ADMINISTRATION.—

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

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(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay—

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) COMMITTEES AND PANELS.—

(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

Fishery management plan.

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority and, from time to time, such amendments to each such plan as are necessary;

Comments.

(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(B), and any fishery management plan or amendment transmitted to it under section 304(c)(2);

Public hearings.

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act;

Reports.

(4) submit to the Secretary—

(A) a report, before February 1 of each year, on the Council's activities during the immediately preceding calendar year,

(B) such periodic reports as the Council deems appropriate, and

(C) any other relevant report which may be requested by the Secretary;

Review.

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority; and

(6) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS. 16 USC 1853.

(a) REQUIRED PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3), and

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and

(5) specify the pertinent data which shall be submitted to the Secretary with respect to the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, and number of hauls.

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery, and

(F) any other relevant considerations; and

(7) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) PROPOSED REGULATIONS.—Any Council may prepare any proposed regulations which it deems necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which is prepared by it. Such proposed regulations shall be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to sections 304 and 305.

(d) CONFIDENTIALITY OF STATISTICS.—Any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) shall be confidential and shall not be disclosed except when required under court order. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics.

16 USC 1854. **SEC. 304. ACTION BY THE SECRETARY.**

(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.—Within 60 days after the Secretary receives any fishery management plan, or any amendment to any such plan, which is prepared by any Council, the Secretary shall—

(1) review such plan or amendment pursuant to subsection (b); and

(2) notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment.

In the case of disapproval or partial disapproval, the Secretary shall include in such notification a statement and explanation of the Secretary's objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council receives such notification.

(b) REVIEW BY THE SECRETARY.—The Secretary shall review any fishery management plan, and any amendment to any such plan, prepared by any Council and submitted to him to determine whether

it is consistent with the national standards, the other provisions of this Act, and any other applicable law. In carrying out such review, the Secretary shall consult with—

(1) the Secretary of State with respect to foreign fishing; and

(2) the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(c) PREPARATION BY THE SECRETARY.—(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management; or

(B) the Secretary disapproves or partially disapproves any such plan or amendment, and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a)(2).

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(2) Whenever, pursuant to paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the appropriate Council may recommend, to the Secretary, changes in such plan or amendment, consistent with the national standards, the other provisions of this Act, and any other applicable law. After the expiration of such 45-day period, the Secretary may implement such plan or amendment pursuant to section 305.

(3) Notwithstanding paragraph (1), the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system described in section 303(b)(6), unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(d) ESTABLISHMENT OF FEES.—The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). Such level shall not exceed the administrative costs incurred by the Secretary in issuing such permits. Regulations.

(e) FISHERIES RESEARCH.—The Secretary shall initiate and maintain a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

(f) MISCELLANEOUS DUTIES.—(1) If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

16 USC 1855.

SEC. 305. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS.

Publication in Federal Register.

(a) IN GENERAL.—As soon as practicable after the Secretary—

(1) approves, pursuant to section 304 (a) and (b), any fishery management plan or amendment; or

(2) prepares, pursuant to section 304(c), any fishery management plan or amendment;

the Secretary shall publish in the Federal Register (A) such plan or amendment, and (B) any regulations which he proposes to promulgate to implement such plan or amendment. Interested persons shall be afforded a period of not less than 45 days after such publication within which to submit in writing data, views, or comments on the plan or amendment, and on the proposed regulations. Written comments.

(b) HEARING.—The Secretary may schedule a hearing, in accordance with section 553 of title 5, United States Code, on any fishery management plan, any amendment to any such plan, and any regulations to implement any such plan or amendment. If any such hearing is scheduled, the Secretary may, pending its outcome—

(A) postpone the effective date of the regulations proposed to implement such plan or amendment; or

(B) take such other action as he deems appropriate to preserve the rights or status of any person.

Regulations.

(c) IMPLEMENTATION.—The Secretary shall promulgate regulations to implement any fishery management plan or any amendment to any such plan—

(1) after consideration of all relevant matters—

(A) presented to him during the 45-day period referred to in subsection (a), and

(B) produced in any hearing held under subsection (b); and

(2) if he finds that the plan or amendment is consistent with the national standards, the other provisions of this Act, and any other applicable law.

To the extent practicable, such regulations shall be put into effect in a manner which does not disrupt the regular fishing season for any fishery.

(d) JUDICIAL REVIEW.—Regulations promulgated by the Secretary under this Act shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated; except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2) (A), (B), (C), or (D) of such title. 5 USC 701 et seq.

Emergency regulations.

(e) EMERGENCY ACTIONS.—If the Secretary finds that an emergency involving any fishery resources exists, he may—

(1) promulgate emergency regulations, without regard to subsections (a) and (c), to implement any fishery management plan, if such emergency so requires; or

(2) promulgate emergency regulations to amend any regulation which implements any existing fishery management plan, to the extent required by such emergency.

Any emergency regulation which changes any existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection (A) shall be published in the Federal Register together with the reasons therefor; (B) shall remain in effect for not more than 45 days after the date of such publication, except that any such regulation may be repromulgated for one additional period of not more than 45 days; and (C) may be terminated by the Secretary at any earlier date by publication in the Federal Register of a notice of termination.

Publication in Federal Register.

Publication in Federal Register.

(f) ANNUAL REPORT.—The Secretary shall report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources that were undertaken under this Act during the preceding calendar year.

Report to Congress and President.

(g) RESPONSIBILITY OF THE SECRETARY.—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

Regulations.

SEC. 306. STATE JURISDICTION.

16 USC 1856.

(a) IN GENERAL.—Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

(b) EXCEPTION.—(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that—

Notice, hearing.

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the fishery conservation zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

SEC. 307. PROHIBITED ACTS.

16 USC 1857.

It is unlawful—

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C); or

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; and

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing—

(A) within the boundaries of any State; or

(B) within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204(b) or (c).

16 USC 1858.

SEC. 308. CIVIL PENALTIES.

(a) ASSESSMENT OF PENALTY.—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found

or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) ACTION UPON FAILURE TO PAY ASSESSMENT.—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

SEC. 309. CRIMINAL OFFENSES. 16 USC 1859.

(a) OFFENSES.—A person is guilty of an offense if he commits any act prohibited by—

(1) section 307(1) (D), (E), (F), or (H); or

(2) section 307(2).

(b) PUNISHMENT.—Any offense described in subsection (a)(1) is punishable by a fine of not more than $50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act (as provided for in section 311), or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than $100,000, or imprisonment for not more than 1 year, or both.

(c) JURISDICTION.—There is Federal jurisdiction over any offense described in this section.

SEC. 310. CIVIL FORFEITURES. 16 USC 1860.

(a) IN GENERAL.—Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 (other than any act for which the issuance of a citation under section 311(c) is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) JURISDICTION OF COURTS.—Any district court of the United States which has jurisdiction under section 311(d) shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) JUDGMENT.—If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d). The provisions of the customs laws relating to—

(1) the disposition of forfeited property,

(2) the proceeds from the sale of forfeited property,

(3) the remission or mitigation of forfeitures, and

(4) the compromise of claims,

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this Act, be performed by officers or other persons designated for such purpose by the Secretary.

(d) PROCEDURE.—(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 311(d) shall—

(A) stay the execution of such process; or

(B) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) REBUTTABLE PRESUMPTION.—For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 were taken or retained in violation of this Act.

16 USC 1861. **SEC. 311. ENFORCEMENT.**

(a) RESPONSIBILITY.—The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall report semiannually, to each committee of the Congress listed in section 203(b) and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this Act.

Reports to congressional committees.

(b) POWERS OF AUTHORIZED OFFICERS.—Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may—

(1) with or without a warrant or other process—

(A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307;

(B) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act;

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed

in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;

(D) seize any fish (wherever found) taken or retained in violation of any provision of this Act; and

(E) seize any other evidence related to any violation of any provision of this Act;

(2) execute any warrant or other process issued by any court of competent jurisdiction; and

(3) exercise any other lawful authority.

(c) ISSUANCE OF CITATIONS.—If any officer authorized to enforce the provisions of this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this Act, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) JURISDICTION OF COURTS.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(e) DEFINITION.—For purposes of this section—

(1) The term "provisions of this Act" includes (A) any regulation or permit issued pursuant to this Act, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 201 (b) or (c), with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term "violation of any provision of this Act" includes (A) the commission of any act prohibited by section 307, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

SEC. 312. EFFECTIVE DATE OF CERTAIN PROVISIONS. 16 USC 1857 note.

Sections 307, 308, 309, 310, and 311 shall take effect March 1, 1977.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON LAW OF THE SEA TREATY. 16 USC 1881.

If the United States ratifies a comprehensive treaty, which includes provisions with respect to fishery conservation and management jurisdiction, resulting from any United Nations Conference on the Law of the Sea, the Secretary, after consultation with the Secretary of State, may promulgate any amendment to the regulations promulgated under this Act if such amendment is necessary and appropriate to

conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

SEC. 402. REPEALS.

(a) The Act of October 14, 1966 (16 U.S.C. 1091–1094), is repealed as of March 1, 1977.

(b) The Act of May 20, 1964 (16 U.S.C. 1081–1086), is repealed as of March 1, 1977.

SEC. 403. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

(a) AMENDMENTS.—The Act of August 27, 1954 (22 U.S.C. 1972), is amended—

(1) by amending section 2 thereof to read as follows:

"SEC. 2. If—

"(1) any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or

"(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

"(A) are unrelated to fishery conservation and management;

"(B) fail to consider and take into account traditional fishing practices of vessels of the United States;

"(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Fishery Conservation and Management Act of 1976); or

"(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—

"(i) for the protection of such vessel and for the health and welfare of its crew;

"(ii) to secure the release of such vessel and its crew; and

"(iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act."; and

Infra.

22 USC 1973.

(2) by amending section 3(a) thereof by inserting immediately before the last sentence thereof the following new sentence: "For purposes of this section, the term 'other direct charge' means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee."

22 USC 1972 note.

22 USC 1973 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall take effect March 1, 1977. The amendment made by subsection (a)(2) shall apply with respect to seizures of vessels of the United States occurring on or after December 31, 1974.

SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

(a) AMENDMENT.—Section 3(15)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)(B)) is amended by striking

out "the fisheries zone established pursuant to the Act of October 14, 1966." and inserting in lieu thereof "the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect March 1, 1977. 16 USC 1362 note.

SEC. 405. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.

(a) AMENDMENT.—Section 2(4) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(4)) is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091–1094)," and inserting in lieu thereof "the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect March 1, 1977. 16 USC 971 note.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS. 16 USC 1882.

There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

(1) $5,000,000 for the fiscal year ending June 30, 1976.

(2) $5,000,000 for the transitional fiscal quarter ending September 30, 1976.

(3) $25,000,000 for the fiscal year ending September 30, 1977.

(4) $30,000,000 for the fiscal year ending September 30, 1978.

Approved April 13, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-445 (Comm. on Merchant Marine and Fisheries) and No. 94-948 (Comm. of Conference).
SENATE REPORTS: No. 94-416 (Comm. on Commerce), No. 94-459 (Comm. on Foreign Relations), and No. 94-515 (Comm. on Armed Services) all accompanying S. 961, and No. 94-711 (Comm. of Conference).
CONGRESSIONAL RECORD:
Vol. 121 (1975): Oct. 9, considered and passed House.
Dec. 19, S. 961 considered in Senate.
Vol. 122 (1976): Jan. 19-22, 27, S. 961 considered in Senate.
Jan. 28, considered and passed Senate, amended, in lieu of S. 961.
Mar. 29, Senate agreed to conference report.
Mar. 30, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:
Vol. 12, No. 16 (1976): Apr. 13, Presidential statement.

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